

REMARKS

Claims 2, 3, 9, 14-16, 23, 25-28 have been cancelled. Claims 1, 4-8, 11-13, 17-22 and 24 remain pending in the present application. Claim 10 has been withdrawn by the Examiner. Claims 1 and 13 have been amended. Basis for the amendment can be found throughout the specification, claims and drawings as originally filed.

OBJECTION TO THE CLAIMS

The Examiner has objected to Claim 10 in that it has been marked as original when it should have been marked as withdrawn. Claim 10 has been amended to reflect that it has been withdrawn.

REJECTION UNDER 35 U.S.C. §103

The Examiner has rejected Claims 1, 5-8, 11-13, 19-22 and 24 under 35 U.S.C. §103(a) alleging them to be unpatentable over Lumpkin (U.S. Patent No. 6,244,396) in view of Shibata et al. (U.S. Patent No. 4,926,978). Also, the Examiner has rejected Claims 4, 9, 17-18 and 23 under 35 U.S.C. 103(a) in view of the above references and further in view of Sugita et al. (U.S. Patent No. 5,503,257).

Claim 1 defines a first friction element being a non-asbestos organic material. A second discrete friction element is formed from a semi-metallic material. The first and second elements are spaced from one another to form a gap between the first and second friction elements to promote air flow around each of the friction elements. The first and second friction elements have configurations which enable multi-positioning and engageability irrespective of their orientation for positioning the friction elements at several different positions on the backing member.

The Examiner's combination fails to disclose or suggest Applicants' invention. First, the Examiner states that Lumpkin includes "the first friction element spaced from the second friction element, both friction elements being connected to the backing plate to form the brake pad, the first and second friction elements being interchangeable to achieve desired frictional characteristic." Clearly, this is not the case. Applicants draw the Examiner's attention to Figure 2. As can be seen in Fig. 2, each brake element 40, 42, 44 include a key element 66 and/or a slot element 68. These elements are not interchangeable. The brake elements 40, 42, 44 must fit in the exact order as shown. If element 42 is rotated 180°, it does not fit with element 44 and 40. If elements 40 or 44 are rotated, they do not fit with element 42. Accordingly, Lumpkin fails to show any type of interchangeability to achieve its desired characteristics. Lumpkin only shows a single orientation of the brake pads.

Further, in view of the keys and slots, Lumpkin's brake elements 40, 42 and 44 are not spaced from one another. The elements abut one another and thus, a gap or space is not created between them as illustrated in Fig. 1. Accordingly, Lumpkin fails to disclose or suggest Applicants' claimed spaced pads.

The Examiner then combines Lumpkin with Shibata et al. Shibata et al. discloses two different materials. Shibata et al. does not disclose spacing nor do they disclose interchangeability. Thus, the Lumpkin reference combined with Shibata et al. fails to disclose or suggest Applicants' invention. Accordingly, Applicants believe Claim 1 and dependent Claims 4-8 and 10-12 to be patentably distinguishable over the Lumpkin and Shibata et al. references.

Claim 13 has been amended to be patterned after Claim 1. Accordingly, the above remarks equally apply to Claim 13. Thus, Claim 13 as well as dependent Claims 17-22 and 24 are patentably distinct over the art cited by the Examiner.

Next, the Examiner alleges that Claims 4, 9, 17-18 and 23 would be unpatentable over the above two references further in view of Sugita et al. Sugita et al. illustrates a brake shoe for an elevator. The Examiner's combination of Sugita et al. with Lumpkin and Shibata et al. is clearly a hindsight approach. Lumpkin teaches securing the brake pad portions together with one another. Sugita et al. teaches the molding of the materials together. Nowhere do these references disclose or suggest the spacing, interchangeability or air flow as claimed by Applicants. Accordingly, only through hindsight reconstruction can the Examiner bring in the Sugita et al. reference. The Examiner is using Applicants' invention as an instruction manual in an attempt to render Applicants' invention obvious. This is an improper combination of references under 35 U.S.C. §103. Accordingly, Applicants believe the Examiner's combination fails to disclose or suggest Applicants' invention and further that the Examiner has improperly combined the references through hindsight reconstruction.

Accordingly, Applicants believe Claims 4, 9, 17-18 and 23 to be patentably distinct over the art cited by the Examiner.

In light of the above amendments and remarks, Applicants submit that all pending claims are in condition for allowance. Accordingly, Applicants respectfully request the Examiner to pass the case to issue at his earliest possible convenience. Should the Examiner have any questions regarding the present application, he should not hesitate to contact the undersigned at (248) 641-1600.

Respectfully submitted,

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